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OFFICE OF PETITIONS

In re Application of	:	
Christopher Van Michaels	:	
Application No. 10/620,870	:	ON PETITION
Filed: 15 July, 2003	:	
For: CLEAN PROCESS OF PROCESSES	:	
FOR MANUFACTURING NON	:	
CARCINOGENOUS ZERO POLLUTING	:	
ECO FUELS FROM GAS HYDRATES,	:	
NOT EXHAUSTING EVEN CO2 TO FACE	:	
THE CANCER AND THE MENACING	:	
GREEN HOUSE EFFECT	:	

This is a decision on the paper entitled "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action" filed on 21 December, 2005.

This application became abandoned on 12 July, 2005, for failure to file a timely reply to the non-final Office action mailed on 11 April, 2005, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 22 November, 2005.

In the present petition, petitioners request that the Office withdraw the holding of abandonment due to non-receipt of the Office action mailed on 11 April, 2005. Petitioner, *pro se*, states that the correspondence address was the residence address of his son, Julian Michaels, who would forward all Office correspondence to petitioner at his residence in Sofia, Bulgaria. Petitioner states that the Office action mailed on 11 April, 2005, was never received by his son "who has no reason to hide any Patent Office's mail from me."

A review of the record indicates no irregularity in the mailing of the nonfinal Office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record.

This presumption may be overcome by showing that the Office action was not in fact received. However, petitioner has not met the showing required to establish nonreceipt of an Office action. To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the **docket record** where the nonreceived Office action would have been entered had it been received and docketed.¹ A proper docket report consists of a "docket record **where the nonreceived Office action would have been entered had it been received and docketed.**"² "For example, if a three-month period for reply was set in the nonreceived Office action, a copy of the docket record showing **all** replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."³

However, as petitioner is a *pro se* applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the nonfinal Office action of 11 April, 2005, was not entered into that system. The Office would like to see documentary evidence and records as may exist which would substantiate that petitioner exercised due diligence with respect to petitioner's most important business.

In this case, if petitioner's son was responsible for receiving Office correspondence, petitioner's son should provide the showing described above. Additionally, if the correspondence became lost after receipt at the correspondence address, a withdraw of the holding of abandonment would not be proper.

¹ M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

² MPEP 711.03(c) (II) (emphasis added).

³ Id.

As such the application is properly held abandoned.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Extensions of time are permitted under 37 CFR 1.136(a). In the alternative, petitioner may wish to file a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

A courtesy copy of the Office action mailed on 11 April, 2005, has been included for petitioner's use in preparing a reply, should petitioner wish to file a petition to revive the application. Additionally, a copy of the petition to revive form has been enclosed, along with the fee schedule.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Cf: Office action mailed on 11 April, 2005
Form for Petition to Revive Under 37 CFR 1.137(b)
Fee Schedule Form